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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
10/623,756	(	07/21/2003	Mark E. Schnute	00223.US1 DV1	4855	
25533	7590	12/17/2003		EXAM	EXAMINER	
PHARMA		PJOHN	COPPINS, JANET L			
301 HENRIETTA ST 0228-32-LAW			ART UNIT	PAPER NUMBER		
KALAMAZOO, MI 49007				1625		
				DATE MAILED: 12/17/2003	3	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extransions of time may be available under the provisions of 3 CPR 1.35(a). In no event, however, may a reply be timely filled  If the period for reply appearation above is less hand hithy (30) days, a reply valid in the lattice princip little of reply appearation to the mainting date of this communication (or reply appearation to the set or examined princip of the reply appearation is the store examined princip of the reply appearation. The mainting date of this communication (or set) is application in the set or examined princip of the communication, even tritinely flust, may rectue any seamed patent term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication (s) filled on 21 July 2003.  2a) This action is FINAL.  2b) This action is format.  2b) This action is final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-3 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  5) Claim(s) is/are allowed.  6) Claim(s) is/are allowed.  6) Claim(s) is/are allowed.  7) Claim(s) is/are allowed.  8) Claim(s) 1-3 is/are pending in the application and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The drawing(s) filed on 1/2 is/are: a) accepted or b) objected to by the Examiner.  Application Papers  10) The drawing(s) filed on 1/2 is/are: a) accepted or b) objected to by the Examiner.  Application Papers  9) A converted from the formation of the foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  3) A converted from the foreign foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  3) A converted from the foreign foreign priority documents have been received in this National Stage application from the		Application No.	Applicant(s)						
Janet Coppins	Office Action Symposy	10/623,756							
- The MAILING DATE of this communication appears on the cover sheat with the correspondence address — Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Estimation of time may be a validation under the provisions of 3 CPR 1.136(a). In no event, however, may a reply to timely filed with the SX (5) No.NTHS from the mailing date of this communication.  If the period of time may be a validation, when meriod with the period will apply validation be according to the period of the period will be supported to the period of the period will be supported to the period will be period will be period will be period will be period to the period of the period will be supported to the period of the period will be period to the period will be supported to the period will be period will be period will be period to the period will be period to the period will be per	Omice Action Summary	Examiner	Art Unit						
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1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 4) Interview Summary (PTO-413) Paper No(s) 5) Notice of Informal Patent Application (PTO-152)	14)⊠ Acknowledgment is made of a claim for c	domestic priority under 35 U.S.C	. §§ 120 and/or 121 since a specific						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  5) Notice of Informal Patent Application (PTO-152)	Attachment(s)								
		.948) 5) Notice of							

## **DETAILED ACTION**

Claims 1-3 pending in the instant application.

## Information Disclosure Statement

1. Receipt is acknowledged of Applicant's Informational Disclosure Statement (IDS), submitted June 21, 2003, which is in compliance with the provisions of 37 CFR 1.97.

Accordingly, the IDS has been considered by the Examiner and entered of record in the file.

## Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3 rejected under 35 U.S.C. 102(e) as being anticipated by Vaillancourt et al., US 6,624,160 B2, filed March 15, 2001.

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Vaillancourt et al teach 4-(3-Bromo-4-fluorobenzyl)morpholine as an intermediate, please refer to Preparation 7, column 32. Vaillancourt et al teach 1-(2-Fluoro-5-(4-morpholinylmethyl)phenyl)ethanone as second intermediate, please refer to Preparation 8, column 32. Vaillancourt et al also teach ethyl 3-(2-fluoro-5-(4-morpholinylmethyl)phenyl)-3-oxopropanoate as an intermediate, please refer to Preparation 9, column 33.

The applied reference has a common Assignee (Pharmacia & Upjohn Co.) with the instant application. Based upon the earlier effective U.S. filing date of the reference, and the earlier priority date (filing date of the provisional application 60/191,291), it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application

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is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Coppins whose telephone number is 703.308.4422. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703.308.4698. The fax phone number for the organization where this application or proceeding is assigned is 703.746.9037.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1235.

Janet L. Coppins

CELA CHANG
PRIMARY EXAMINER, AUT: & SPE
GROUP.1200/65